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Federal Communications Commission
Office of Secretary

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November 5, 2004

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW - Portals
Washington, DC 20554

Re: Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112; CC Docket Nos. 00-175, 01-337, 02-33

Dear Ms. Dortch:

Today, Verizon filed highly confidential information regarding Verizon's share of the mass market long distance business, which is subject to the terms of the Commission's protective order in this docket.

Attached to this letter is the redacted version of this information.

All inquiries relating to access to the confidential information submitted by Verizon should be addressed to:

Jennifer L. Hoh
Verizon Legal Department
1515 North Courthouse Road, Suite 500
Arlington, VA 22201-2909
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REDACTED VERSION

CC DOCKET NOS. 00-175, 01-337, 02-33 AND WC DOCKET NO. 02-112
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Ms. Marlene Dortch
November 5, 2004
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Please date-stamp the extra copy of this letter and return it to the individual delivering this filing.

Sincerely,

A handwritten signature in black ink, appearing to be "S. D.", with a large, stylized flourish extending to the right.

Attachment

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Dee May
Vice President - Federal Regulatory

Federal Communications Commission
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November 5, 2004

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Sunset of the BOC Separate Affiliate and Related Requirements*; WC Docket No. 02-112, CC Docket Nos. 00-175, 01-337, 02-33

Dear Ms. Dortch:

This provides a further response to various *ex parte* filings in which AT&T argues that the former Bell Operating Companies ("BOCs") should be subject to dominant carrier regulation when they provide long distance services based on misleading estimates of the BOCs' shares of the long distance business. AT&T relies on flawed definitions of the relevant market and arbitrarily excludes long distance services provided by a number of competitors from its calculations. In particular, AT&T misuses data submitted by Verizon in its May 19, 2004 response to the Commission staff's request for data on the mass market for long distance services. As Verizon demonstrated in that filing and in its August 16, 2004 update, its share of the long distance business is far too small, even years after it obtained section 271 authority, to support a finding of market power, and the rapidly accelerating entry of new providers and alternative platforms make it impossible for Verizon to exercise market power or engage in predation. The Commission should reject AT&T's flawed data and its even more flawed arguments.

In its June 9 *ex parte*, AT&T presented exaggerated estimates of the BOCs' shares of long distance services to the mass market by including only long distance services provided over the traditional wireline networks of the local exchange carriers and competitive local exchange carriers. For instance, it claims that Verizon has ****begin proprietary** **end proprietary**** percent of the mass market long distance business in New York, relying on the data that Verizon submitted in its May 19 *ex parte* filing. However, that filing showed that Verizon's share of mass market long distance services in New York was, at most, only ****begin proprietary** **end proprietary**** percent, and actually it was materially lower due to other sources of competition

that could not be quantified.¹ Verizon's August 16 filing provided corrected data showing that Verizon's share, at most, is only ****begin proprietary** **end proprietary**** percent, and again it actually is materially lower than even that figure.² AT&T claims the percentage is much higher because AT&T excludes wireless lines from the denominator, arguing that including wireless in the definition of the market ignores the market share of Verizon's wireless affiliate.³ But the issue in this proceeding is whether the BOC should be treated as nondominant if it provides long distance services after sunset of the section 272 separate affiliate requirement. When a Verizon BOC provides long distance services, it competes with *all* providers of long distance services, including its wireless affiliate. Verizon's wireless carrier faces intense competition and cannot offer higher prices to lessen the competitive pressure on its wireline affiliates. As Verizon demonstrated in its May 19 *ex parte*, the traditional wireline carriers have been losing both access lines and long distance minutes of use to wireless carriers, due to attractive wireless pricing plans that include both local and long distance minutes and the easy substitutability of wireless for wireline. Even AT&T has admitted that "Consumer long distance voice usage is declining as a result of substitution to wireless service."⁴ Whether the provider of that alternative service is an affiliated or unaffiliated wireless carrier, it offers a competitive alternative that prevents the wireline long distance carrier from exercising market power.

In addition, as noted above, Verizon's actual share of the mass market long distance business in New York is well below ****begin proprietary** **end proprietary**** percent, because Verizon's estimate does not include all of the competitive alternatives in the mass market. For example, it does not include small business lines of competitive local exchange carriers, because Verizon derived the estimate of competitive local exchange carrier lines from the E911 listings, and the business E911 listings do not distinguish between small and large business.⁵ As is shown in Table 2 of the May 19 filing, competitive local exchange carriers have over ****begin proprietary** **end proprietary**** million E911 business listings, and a large portion of these undoubtedly are small business lines that belong in the mass market category.

Verizon also did not include telephony services offered by cable companies or by voice over Internet telephony ("VoIP") carriers, because the data for these carriers were not available. However, these services are growing rapidly and are having a profound effect on the structure of

¹ See *Ex Parte* Letter from Dee May, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Table 1 (filed May 19, 2004) ("Verizon May 19 *Ex Parte*").

² See *Ex Parte* Letter from Dee May, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Table 1 (filed Aug. 16, 2004).

³ See AT&T June 9, 2004 *Ex Parte*, Confidential Attachment at 2. AT&T also argues that there are "significant access charge disparities" for wireless services, but does not explain what this means or why it is relevant. To a customer of long distance services, the access charges that the carriers pay to each other, or any other costs that the carriers incur, are irrelevant. The customer looks only to the prices that each long distance carrier charges to the long distance customer. If the effective rates for long distance calls on a wireless network are less than the rates for making the same calls on a landline phone, the customer will have an economic incentive to use the wireless phone.

⁴ AT&T Corp., Form 10-K (SEC filed Mar. 15, 2004).

⁵ See Verizon May 19 *Ex Parte*, fn. 1.

the market. As Verizon showed in its comments in the *Interim Order NPRM*,⁶ cable companies already offer circuit-switched voice telephone service to 15 percent of homes nationwide.⁷ By the end of 2004, they plan to offer VoIP to over 24 million homes in their networks, and they plan to offer it to more than 40 million homes by the following year and to more than 90 million by the end of 2006.⁸ Within Verizon's region alone, cable companies already offer voice telephone service in markets that reach more than 18 million homes, and have announced that they will offer service on a much wider basis by the end of this year.⁹ For example, Cablevision already offers VoIP service to the four million homes that it passes in New York and New Jersey, and it is adding 3,400 new VoIP subscribers each week.¹⁰ Time Warner now offers VoIP service in 30 of its 31 markets and will offer the service in all of its markets – which pass a total of 19 million homes – by the end of 2004.¹¹ As of mid-August 2004, Time Warner was signing up 1,200 customers per day (or some 36,000 customers per month) for VoIP service in its various markets. In Verizon's service areas, Cox already offers circuit-switched voice service to approximately 1.7 million homes, and it is also rolling out VoIP service.¹² Comcast is already offering circuit-switched voice telephone service to 6 million customers in Verizon's local service areas, and if Comcast's rollout of VoIP service in Verizon's service areas reflects the national average, it will be ready to offer VoIP service to 8 million homes in the Verizon service areas by the end of 2004 and to more than 15 million homes by 2006.¹³

Regardless of whether the cable companies themselves offer VoIP services, competition is available from other VoIP providers.¹⁴ Nearly 90 percent of U.S. homes and 92 percent of the population in Verizon's 50 top metropolitan statistical areas (based on number of access lines) have access to cable modem service.¹⁵ In the states where Verizon offers local service, there were already more than 11 million cable modem subscribers by the end of 2003, a 46 percent increase from the previous year alone.¹⁶ Any customer that has access to cable modem service also has access to VoIP service from multiple competitors ranging from major long distance carriers such as AT&T to nationwide VoIP providers such as Vonage. AT&T is already offering VoIP service in 121 major markets covering 62 percent of U.S. households, and it projects that it will have at

⁶ Order and Notice of Proposed Rulemaking, *Unbundled Access to Network Elements*, 19 FCC Rcd 16292 (2004) (“*Interim Order NPRM*”).

⁷ Comments of Verizon, *Unbundled Access to Network Elements*, WC Docket No. 04-313, at 4-5 (filed Oct. 4, 2004) (“Verizon Oct. 4 Comments”); Reply Comments of Verizon at 116-20 (filed Oct. 19, 2004) (“Verizon Oct. 19 Reply Comments”) (attached).

⁸ See Verizon Oct. 4 Comments at 92.

⁹ See Verizon Oct. 19 Reply Comments at 116.

¹⁰ See Verizon Oct. 4 Comments at 92.

¹¹ See *id.*

¹² See *id.* at 93-94.

¹³ See *id.* at 93.

¹⁴ See *id.* at 95-99; Verizon Oct. 19 Reply Comments at 120-26.

¹⁵ See Verizon Oct. 4 Comments at 96.

¹⁶ See *id.* at 96.

least one million mass market customers by 2005.¹⁷ Vonage also expects to have one million customers as early as the summer of 2005.¹⁸

VoIP service is also available to small business customers. According to their own websites, cable companies appear to be offering service to business customers in at least 90 metropolitan statistical areas.¹⁹ For example, "[Cablevision] Lightpath has become the preferred provider of voice, data, and Internet services for more than 4,000 businesses throughout Long Island, Westchester County, New York City, Connecticut, and New Jersey."²⁰

If data for all of these competing services were included, Verizon's market share in New York would be well below ****begin proprietary** **end proprietary**** percent. Even at this level, Verizon's market share is far below the level at which AT&T was found to be nondominant.²¹

In its June 28 *ex parte*, AT&T repeats its previous arguments that there is a separate market for long distance service that is "bundled" with local exchange service, and that the BOCs dominate this so-called market as well. Verizon and others have already demonstrated that bundled services do not constitute a relevant market for purposes of assessing market power in long distance, most recently in an analysis by National Economic Research Associates, Inc. that attested to the cross-elasticity among all types of long distance pricing plans, both stand-alone and bundled.²²

Even aside from this fundamental flaw, AT&T's claim is based on hopelessly flawed calculations. For example, in Table 1, AT&T uses the data reported in Verizon's May 19 *ex parte* filing to claim that Verizon has ****begin proprietary** **end proprietary**** percent of the bundled market in New York. For the numerator of the equation, representing its view of the number of customers purchasing bundles from Verizon, it simply uses the total number of long distance lines that are presubscribed to Verizon's long distance affiliates. This clearly is incorrect. AT&T does not define the term "bundle," at times referring to "packages" of local and long distance service that are offered at a combined discount, and other times referring to pricing plans that provide unlimited, all-distance calls for a flat fee. Regardless, a large proportion of Verizon's long distance customers do not purchase either of these types of "bundled" pricing plans, opting instead for the kind of stand-alone pricing plans that are offered by non-affiliated interexchange carriers. And most do not purchase the Verizon "Freedom" plan that offers unlimited all-distance calling for a flat fee.

¹⁷ See *id.* at 95.

¹⁸ See Verizon Oct. 19 Reply Comments at 123.

¹⁹ See Verizon Oct. 4 Comments at 94.

²⁰ *Id.*

²¹ See *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, ¶ 67 (1995).

²² See *Ex Parte* Letter from Verizon, SBC and BellSouth to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112, Declaration of William E. Taylor, Timothy J. Tardiff, and Harold Ware, National Economic Research Associates, Inc., at 10-11 (filed Aug. 10, 2004); Letter from Brett A. Kissel, SBC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-112 (filed Oct. 29, 2004).

Having exaggerated the numerator, AT&T then understates the denominator, defining the entire “bundled” market as consisting only of (1) the number of Verizon presubscribed lines; and (2) the number of access lines offered by competitive local exchange carriers. These numbers, selectively drawn from Verizon’s May 19 *ex parte* filing, exclude the bundles offered by wireless carriers, which by AT&T’s approach would include over 10 million lines in New York.²³ They also do not include bundles offered by the competitive local exchange carriers to small businesses, since AT&T uses the data from Verizon’s filing that exclude business E911 listings. Most importantly, AT&T ignores Verizon’s showing in the May 19 *ex parte* that bundles are offered by other carriers at prices that make these services extremely competitive with Verizon’s service bundles, including VoIP carriers and cable companies.²⁴ VoIP carriers typically offer bundles of unlimited local and long distance voice telephony priced 30-40 percent or more below comparable narrowband (circuit-switched) offerings.²⁵ In New York, for example, AT&T offers unlimited local and long distance VoIP service for \$29.95 per month, significantly below the \$59.95 price for Verizon Freedom bundled service and on a par with Verizon’s VoIP offerings. Cablevision offers a bundled package of local and long distance voice service, high speed Internet access, and digital cable for \$89.95, about the same price that it previously charged for high speed Internet access and digital cable alone.²⁶ The result, according to Cablevision, is that customers “are essentially receiving their voice service for free.”²⁷ Vonage offers a package of unlimited local and long distance service for only \$24.95 per month, having recently cut its prices by \$5 per month in response to AT&T’s \$5 price decrease.²⁸ And Lingo, BroadVoice, and Packet8 offer similar bundled packages for \$19.95.²⁹ AT&T’s failure to acknowledge that there are *any* providers of bundles other than the BOCs and the competitive local exchange carriers shows that it has not made any attempt to present meaningful data even for its own gerrymandered market.

For these reasons, the Commission should completely disregard the market share data provided by AT&T in these *ex parte* filings.

²³ AT&T counts all of the lines offered by competitive local exchange carriers as bundles, presumably because these carriers do not offer customers the ability to choose the long distance services of non-affiliated interexchange carriers. Since wireless carriers also do not offer presubscription, AT&T’s approach would treat all of their lines as “bundles.”

²⁴ See, e.g., Verizon May 19 *ex parte*, Table 10 New York.

²⁵ Verizon updated these charts in its comments in the *Interim Order NPRM* proceeding. See Verizon Oct. 4 Comments at 97; Verizon Oct. 19 Reply Comments at 121.

²⁶ See *id.*

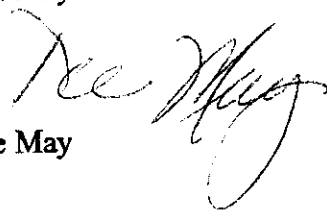
²⁷ *Cablevision to Offer Internet Phone-Call Bundle*, Wall St. J. at B55 (June 21, 2004) (quoting Patricia Gottesman, Senior Vice President, consumer product management and marketing, Cablevision).

²⁸ See Verizon Oct. 4 Comments, at 97-98.

²⁹ See *id.* at 98.

Sincerely

Dee May

A handwritten signature in cursive script, appearing to read "Dee May", written in dark ink.

cc: M. Carowitz
B. Childers
W. Cox
W. Dever
A. Dunnigan
K. Jackson
W. Kehoe
P. Magna
J. Minkoff
C. Rand

DOCKET NO. 02-112, 00-175, 01-337, 02-33
Attachment A

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